

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Kenneth Morice Jordan,)	
)	
Plaintiff,)	Civil Action No. 6:13-2247-TLW-KFM
)	
vs.)	<u>REPORT OF MAGISTRATE JUDGE</u>
)	<u>AND ORDER</u>
Shawntele Hooks, Levern Cohen, Gary)	
Eichenberg, Monique Capers, Sgt.)	
Mole,)	
)	
Defendants.)	
)	

This matter is before the court on the plaintiff's motion for default judgment (doc. 26). The plaintiff, a state prisoner proceeding *pro se*, seeks relief pursuant to Title 42, United States Code, Section 1983. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Civil Rule 73.02(B)(2)(d) DSC, this magistrate judge is authorized to review all pretrial matters in cases filed under Title 42, United States Code, Section 1983, and submit findings and recommendations to the District Court.

The plaintiff filed his complaint on August 26, 2013, and the undersigned authorized service of process on the defendants on August 27, 2013. The defendants were served with the summons and complaint on September 27, 2013 (see doc. 18). Accordingly, the defendants' answer was due on or before October 18, 2013. The defendants timely filed their answer on that date (doc. 24). On November 7, 2013, the plaintiff filed the instant motion stating that "as of October 4, 2013" he had not received an answer from the defendants. In their response to the motion for default, the defendants state that upon receipt of the plaintiff's motion and realizing the plaintiff did not timely receive a copy of the answer, they properly served the plaintiff on November 8, 2013, with a copy of the answer, and they filed an amended certificate of service (doc. 27).

The original certificate of service shows that the defendants mistakenly mailed the answer on October 18, 2013, to the plaintiff's attention at Ridgeland Correctional Institution (doc. 24 at p. 5). The plaintiff has been incarcerated at Allendale Correctional Institution since the filing of his complaint. The amended certificate of service shows that on November 8, 2013, the defendants once again mailed the answer to the plaintiff's attention at Ridgeland (doc. 27).

The defendants are directed to immediately serve the plaintiff with their answer at Allendale Correctional Institution, Jasper Unit SMU A225, P.O. Box 1151, Fairfax, South Carolina 29827. The defendants are further directed to file an amended certificate of service showing proper service of the answer.

Federal Rule of Civil Procedure 55 provides that the clerk must enter a party's default if the party has failed to plead or otherwise defend. Fed.R.Civ.P. 55(a). As set forth above, the defendants timely filed their answer. Accordingly, the undersigned recommends that the motion for default (doc. 26) be denied.

s/ Kevin F. McDonald
United States Magistrate Judge

December 2013
Greenville, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).